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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,401	01/23/2004	J. Erik Hitzelberger	380-196	9497

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EXAMINER

SNIDER, THERESA T

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 11/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/764,401

Applicant(s)

HITZELBERGER ET AL.

Examiner

Theresa T. Snider

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 5/7/2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 3/25/2004.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application
- ☐ Other: ____.

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 45,63,70 (figure 1). Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

2. The disclosure is objected to because of the following informalities:

Exemplary of such:

Page 8, line 18, '16' should be replaced with '216' to correspond with figure 2.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 10 and 12-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10, line 3, it is unclear as to what is meant by 'not found...second agitator'; the claim only has one motor.

Claim 12, line 2, it is unclear as to what is meant by 'circuit one of a signal'.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 7-11, 15, 17 and 21 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Novinger.

Novinger discloses a nozzle assembly (fig. 1, #10).

Novinger discloses a first and second agitator in the nozzle assembly (fig. 1, #11).

Novinger discloses an agitator motor control circuit to drive the agitators at speeds different and the same as each other (col. 10, lines 25-50, circuit needed to be present to transmit from switch to motor).

With respect to claims 8 and 21, Novinger discloses a first and second motor for driving the first and second agitators (fig. 12, #48A, 11A, 48B, 11B).

With respect to claim 9, Novinger discloses a motor for driving the first and second agitators (col. 6, lines 53-54).

With respect to claim 10, Novinger discloses a gear mechanism between the motor and the agitator (col. 8, lines 9-15).

With respect to claims 11 and 17, Novinger discloses a switch with at least two positions (col. 10, lines 32-47).

With respect to claim 15, Novinger discloses a suction fan motor separate from the agitator motor (col. 6, lines 53-54, col. 10, lines 9-10).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

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claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 1-6, 17-20 and 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hawkins et al..

Hawkins et al. discloses a similar floor care apparatus however fails to disclose the electrical communications.

Hawkins et al. discloses a nozzle assembly (fig. 2, #120a).

Hawkins et al. discloses an agitator in the nozzle assembly (fig. 2, #106).

Hawkins et al. discloses a motor coupled to the agitator (fig. 2, #105).

Hawkins et al. discloses a switch with at least two positions (fig. 1, #102).

Hawkins et al. discloses an agitator motor control circuit (0009).

With respect to claims 1-3, 5-6, 19-20 and 22-25, it would have been obvious to one of ordinary skill in the art to determine the most appropriate electrical operations of

Hawkins et al. to allow for the most effective transmission of the signal from the switch to the motor (0009,0018,0021).

With respect to claims 4, 17 and 25, Hawkins et al. discloses a suction fan motor separate from the motor coupled to the agitator (fig. 2, #130).

With respect to claims 17 and 25, Hawkins et al. discloses the nozzle assembly in fluid communication with the suction fan motor (0013).

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With respect to claims 18 and 25, Hawkins et al. discloses the motor not existing in the airflow path (fig. 2, #105).

11. Claims 1-6, 17-20 and 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Driessen et al..

Driessen et al. discloses a similar floor care apparatus however fails to disclose the electrical communications.

Driessen et al. discloses a nozzle assembly (fig. 1, #7).

Driessen et al. discloses an agitator in the nozzle assembly (fig. 2, #41).

Driessen et al. discloses a motor coupled to the agitator (fig. 2, #45).

Driessen et al. discloses a switch with at least two positions (col. 5, lines 54-59).

Driessen et al. discloses an agitator motor control circuit (fig. 4).

With respect to claims 1-3, 5-6, 19-20 and 22-25, it would have been obvious to one of ordinary skill in the art to determine the most appropriate electrical operations of Driessen et al. to allow for the most effective transmission of the signal from the switch to the motor.

With respect to claims 4, 17 and 25, Driessen et al. discloses a suction fan motor separate from the motor coupled to the agitator (fig. 1, #23).

With respect to claims 17 and 25, Driessen et al. discloses the nozzle assembly in fluid communication with the suction fan motor (fig. 1, #7,9,13,1).

With respect to claims 18 and 25, Driessen et al. discloses the motor not existing in the airflow path (fig. 2, #45,3739).

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12. Claims 12-14, 16 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Novinger.

Novinger discloses a similar floor care apparatus however fails to disclose the details of the circuit.

It would have been obvious to one of ordinary skill in the art to determine the most appropriate duty cycle in Novinger to allow for the most effective rotation of the agitators.

With respect to claim 16, Novinger discloses a switch with at least two positions (col. 10, lines 32-47). It would have been obvious to one of ordinary skill in the art to determine the most appropriate electrical components needs in Novinger to allow the switch and circuit to interact and correctly operate the motor.

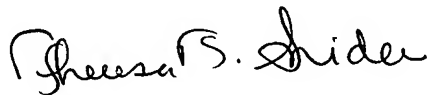
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Theresa T. Snider whose telephone number is (571) 272-1277.

The examiner can normally be reached on Monday-Friday (5:30am-2:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read "Theresa T. Snider". The signature is fluid and cursive, with the first name "Theresa" and last name "Snider" clearly distinguishable.

Theresa T. Snider
Primary Examiner
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11/1/06